



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

December 7, 2017

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Otis Perkins**
Tax Registry No. 941103
Fleet Services Division
Disciplinary Case No. 2016-16242

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on October 11, 2017 and October 18, 2017, charged with the following:

DISCIPLINARY CASE NO. 2016-16242

1. Police Officer Otis Perkins, while assigned to Police Service Area 3, on or about and between February 11, 2016 and May 11, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Perkins wrongfully ingested and/or injected anabolic agents, anabolic steroids, and/or precursors to such anabolic agents and/or anabolic steroids, without police or medical necessity, to wit: Boldenone, Nandrolone, Oxymetholone and/or 1-Testosterone. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

2. Police Officer Otis Perkins, while assigned to Police Service Area 3, on or about and between February 11, 2016 and May 11, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Perkins wrongfully possessed anabolic agents, anabolic steroids, and/or precursors to such anabolic agents and/or anabolic steroids, without police or medical necessity, to wit: Boldenone, Nandrolone, Oxymetholone and/or 1-Testosterone. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

In a Memorandum dated November 21, 2017, Assistant Deputy Commissioner Jeff S. Adler found Police Officer Perkins Guilty of all Specifications in Disciplinary Case No. 2016-16242. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the circumstances and issues concerning the misconduct for which Police Officer Perkins has been found Guilty and deem that separation from the Department is warranted. However, instead of an outright dismissal from the Department, I will permit an alternative manner of separation from the Department for Police Officer Perkins at this time.

It is therefore directed that an *immediate* post-trial negotiated agreement be implemented with Police Officer Perkins in which he shall immediately file for vested-interest retirement, forfeit thirty (30) suspension days (previously served), forfeit thirty (30) suspension days (to be served), waive all time and leave balances, including terminal leave, and waive all suspension days, with and without pay, if any, and be placed on one (1) year dismissal probation.

Such vested-interest retirement shall also include Police Officer Perkin's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If Police Officer Perkins does not agree to the terms of this vested-interest retirement agreement as noted, this Office is to be notified without delay. This agreement is to be implemented *IMMEDIATELY*.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT

November 21, 2017

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In the Matter of the Charges and Specifications : Case No.
- against - : 2016-16242
Police Officer Otis Perkins :
Tax Registry No. 941103 :
Fleet Services Division :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department:

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Department Advocate's Office
One Police Plaza
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For the Respondent:

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To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

Charges and Specifications:

1. Police Officer Otis Perkins, while assigned to Police Service Area 3, on or about and between February 11, 2016 and May 11, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Perkins wrongfully ingested and/or injected anabolic agents, anabolic steroids, and/or precursors to such anabolic agents and/or anabolic steroids, without police or medical necessity, to wit: Boldenone, Nandrolone, Oxymetholone and/or 1-Testosterone. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

2. Police Officer Otis Perkins, while assigned to Police Service Area 3, on or about and between February 11, 2016 and May 11, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Perkins wrongfully possessed anabolic agents, anabolic steroids, and/or precursors to such anabolic agents and/or anabolic steroids, without police or medical necessity, to wit: Boldenone, Nandrolone, Oxymetholone and/or 1-Testosterone. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 11, 2017 and October 18, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Dr. R.H. Barry Sample, Police Officer Sandro Scacchi, Dr. Joseph Ciuffo, and Dr. Gary Green as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

On May 11, 2016, Respondent was administered a random urine test by the Medical Division. Respondent tested positive for four anabolic steroids: Boldenone, Nandrolone, Oxymetholone, and 1-Testosterone, all of which are controlled substances. Respondent acknowledges that he did test positive for the steroids in question, but claims he had a valid prescription for two of them, and that the remaining positive test results came from his innocent use of over-the-counter supplements. At issue is whether the positive test results can legitimately be explained by the alternative explanations proffered by Respondent.

Officer Sandro Scacchi, from the Drug Screening Unit of the Medical Division, testified regarding the collection of Respondent's urine sample on May 11, 2016. Multiple documents prepared in connection with this process were admitted as a packet (Dept. Ex. 3). According to Officer Scacchi, before he collected the urine sample he gave Respondent a questionnaire to fill out. For the question asking what medications he had taken in the past 72 hours, Respondent listed only Aleve, and made no mention of any prescription medications. For the question asking Respondent to list any prescription drugs taken during the past 3 months, Respondent indicated that there was "nothing to report." (Tr. 111-114; Dept. Ex. 3 at C-9, C-10)

After completing the questionnaire, Officer Scacchi accompanied Respondent to the restroom, and observed Respondent urinate into a cup. Officer Scacchi then poured that urine into two separate vials, which he sealed and labeled as samples A and B. The samples were placed inside a locked refrigerator, until they were moved and secured inside another refrigerator at the sick desk later that day. Dr. Scacchi testified from his

review of the records that the following day, the samples were sent by Federal Express to Quest Laboratories for analysis. (Tr. 116-126, 137, 141-142)

Dr. R. H. Barry Sample, the Senior Director of Science and Technology at Quest Diagnostics, testified as an expert in forensic toxicology. Dr. Sample explained the process by which his federally certified laboratory receives and tests urine specimens. Initially, the specimens are checked to ensure that they are sealed and have no signs of tampering. Next, the specimens are logged into the laboratory computer system, and transferred to the processing unit for analysis. In order to determine whether there is evidence of steroid use, the specimens are tested for the presence of certain anabolic steroid metabolites, which are byproducts produced by the body after the ingestion of steroids. (Tr. 15-19, 64-67)

Here, the lab received from the Department two urine specimens provided by Respondent. Samples from both of these specimens were tested on a gas chromatograph mass spectrometer for the presence of anabolic steroids. The results of these tests are contained in two laboratory packages, one designated the "A" specimen and one the "B" specimen (Dept. Exs. 1 and 2, respectively). (Tr. 29-33)

Dr. Sample explained that consistent with standard operating procedure, a sample was removed from specimen A for anabolic steroids testing. The test result from the first sample was a "presumptive positive" for the presence of metabolites for four anabolic steroids: Boldenone, Nandrolone, Oxymetholone, and 1-Testosterone. These results prompted a confirmation test on a second sample removed from specimen A, which also tested positive for the metabolites. (Tr. 20-27, 34-39, 43-44, 47; Dept. Ex. 1 at 52-56, 159, 189-190, 236-238, 291, 297-299) In light of these two positive test results, two

samples from specimen B were then tested as well. The first sample again returned a presumptive positive, which was confirmed by a positive test result on the second sample. (Tr. 27-29, 45; Dept. Ex. 2)

According to Dr. Sample, the positive test results for these metabolites indicates the ingestion either of the four anabolic steroids, or substances with similar chemical structures known as "precursors." These precursors have been illegal since the passage of the Anabolic Steroid Control Act of 2004. Dr. Sample testified that Boldenone, Nandrolone, and Oxymetholone all can be prescribed for legitimate medical purposes, though Boldenone is only for use in veterinary medicine. 1-Testosterone is not a legitimate pharmaceutical product in the United States. (Tr. 39-43, 75, 79-80)

Dr. Sample viewed photographs of several bottles (Resp. Exs. A-F), and was asked if their contents might have led to the positive test results in this case. One photograph (Resp. Ex. B) showed the bottle of a [REDACTED] prescription, [REDACTED] that Respondent claimed to have taken; Dr. Sample explained that taking these [REDACTED] could not have led to any of the positive test results. (Tr. 82-83) Dr. Sample also viewed two photographs (Resp. Exs. C and D) that showed the front and back of a supplement product. Although the list of ingredients was incomplete, Dr. Sample did not see any indication of anything having a "characteristic steroid structure." Photograph E showed the backs of two more supplement products with certain ingredients listed. Dr. Sample testified that the use of those substances would not produce the positive test results. (Tr. 83-86)

Dr. Joseph Ciuffo, Deputy Chief Surgeon with the Medical Division, testified about his role as medical review officer. Drug samples that test positive are forwarded to

him for his review, to explore whether there are any legitimate alternative medical explanations for the positive results. A packet of documents connected with his review in this case was admitted as Dept. Ex. 4. (Tr. 149-150, 180)

As part of his review, Dr. Ciuffo initially interviewed Respondent on June 7, 2016. [REDACTED]

[REDACTED]

Respondent stated that on the recommendation of a gym acquaintance, he called the Wellness Fitness Nutrition Clinic in Florida. Respondent had bloodwork from a local lab forwarded to the clinic, and then spoke with a doctor there [REDACTED].

A receipt for a [REDACTED] prescription from a Michigan pharmacy, as well as one for [REDACTED], appear on pages III-1 and III-2 of the packet. Dr. Ciuffo testified that the [REDACTED] prescription could have led to the positive test result for 1-Testosterone.

However, he added that no records were produced to justify a prescription for [REDACTED] here, which normally is prescribed for [REDACTED]. Similarly, there were no records justifying a prescription [REDACTED]

[REDACTED]

Indeed, neither Respondent nor Dr. Ciuffo were able to obtain any medical records from the Florida clinic that issued these prescriptions. (Tr. 153-154, 157, 163-167, 175, 190; Dept. Ex. 4 at II-5 thru II-8)

Dr. Ciuffo described what occurred here as "not the standard physician encounter." He testified that writing a valid prescription requires "more than just speaking to a person and looking at a blood test result. You have to do a history, a physical, you can do laboratory testing to confirm your impressions, and then is when

you would write prescriptions for people." The encounter should then be documented with a medical record. (Tr. 187-190)

Dr. Ciuffo testified that Respondent also stated that he was taking over-the-counter supplements [REDACTED]. Specifically, Respondent named creatine, amino acids, whey protein, and natural testosterone booster. The day after the initial interview, Respondent produced vials of the [REDACTED] prescription, as well as several bottles of the supplement products, which Dr. Ciuffo photographed. Dr. Ciuffo testified that none of the supplements Respondent listed or produced would have produced the positive test results for the four anabolic steroids. He acknowledged, however, that the supplements are not regulated by the FDA, and that he did not test the products to determine their actual ingredients. (Tr. 154, 169-172, 175-176, 197-205)

Dr. Gary Green, who is board certified in sports medicine and internal medicine, testified as an expert in performance-enhancing drugs and anabolic steroids. He has been involved as a consultant in the field of performance-enhancing drugs for 30 years. Indeed, Dr. Green was consulted in formulating Department policy regarding steroids. Dr. Green explained that anabolic steroids are controlled substances that are not available without a valid prescription. The "anabolic" aspect of the steroids promotes muscle growth. Steroids that are injected may last in the body for several months, whereas those that are taken orally generally are of shorter duration. (Tr. 216-217, 220-222, 225-226, 233)

Dr. Green testified that Boldenone is a veterinary product for use in horses, which now is used illegally by humans as a performance-enhancing drug. Nandrolone currently

has few legitimate uses, such as for AIDS patients and burn victims; in the past, it was prescribed for anemia and for breast cancer patients. Dr. Green described Oxymetholone as prized by bodybuilders for its use as an anabolic agent; it formerly was used for anemia, but has few legitimate uses today. 1-Testosterone is often found as a result of using dietary supplements, but is not legally prescribed in the United States. (Tr. 224-225)

From his review of the records in this case, Dr. Green did not see any legitimate medical justification for the use of any of the anabolic steroids for which Respondent tested positive. He did not, for instance, see any evidence that Respondent had a testosterone deficiency. Dr. Green explained that Respondent's positive test results are consistent with "stacking," whereby a person takes multiple steroids, some through injection and some orally, in order to maximize the anabolic effects. (Tr. 226-230, 238)

Respondent, who is 6'1", and about 300-lbs., testified that he works out three or four times a week. He started working out in high school. Respondent also takes over-the-counter supplements, such as whey protein and vitamins, which can be purchased from places like GNC and Target. [REDACTED]

[REDACTED] Respondent claimed he avoided consulting with Department doctors out of embarrassment. Instead, on the recommendation of a gym acquaintance, Respondent contacted the Wellness Fitness clinic in Florida. He spoke by telephone with a representative, who instructed him to get blood work done before speaking with one of their doctors. Respondent had the blood work done at a local CityMD, and faxed the results to the clinic. He discussed the results over the phone with a clinic doctor, but did not have a physical examination with that

doctor. The doctor said that Respondent's [REDACTED], and issued two prescriptions to be sent to Respondent through a pharmacy. The prescriptions were for [REDACTED], neither of which Respondent had ever taken before. He took the [REDACTED] and the [REDACTED] [REDACTED] (Tr. 248-252, 262-267, 270-271)

Respondent testified that he took these medications for about one year beginning some time in 2015, and continued to take the supplements as well. At his drug test on May 11, 2016, he did not mention his use of the prescription drugs, since the questionnaire only asked about use in the past 72 hours, and he had not taken the drugs during that period. When he met with Dr. Ciuffo, he provided the bottles depicted in the photographs in evidence (Resp. Exs A-F). Additionally, Respondent produced at trial a photograph of the front of one of those bottles, which listed "anabolic" on the front label (Resp. Ex. G). Respondent testified that in the fall of 2016, subsequent to his positive drug test, he was prescribed [REDACTED] with the approval of the Department's district surgeon. Respondent also continues to take supplements, such as amino acids and whey protein. (Tr. 253-261)

It is undisputed that Respondent tested positive for the presence of four anabolic steroids. Specifically, Respondent tested positive for Boldenone, Nandrolone, Oxymetholone, and 1-Testosterone, all of which are controlled substances. Nevertheless, Respondent raises a mixed defense to the charges against him. Respondent claims that two of the positive results, the ones for 1-Testosterone and Oxymetholone, were caused by Respondent's taking validly prescribed medications. Respondent also claims that the

remaining positive test results came from the supplements he took. Neither defense is persuasive.

Respondent produced receipts for two prescriptions, [REDACTED]. [REDACTED]. Dr. Ciuffo testified that the [REDACTED] medication could have led to the positive test result for 1-Testosterone. However, Dr. Sample, who unlike Dr. Ciuffo is an expert in forensic toxicology, explained that the [REDACTED] could not have led to the positive test result for 1-Testosterone, and I credit his testimony. As such, only the positive test result for [REDACTED] could be attributed to the prescriptions.

There is, however, a question as to the legitimacy of the prescriptions themselves. Paragraph 2 of the Department's Personnel Bureau Memo No. 44 (July 1, 2011) ("PBM-44"), entitled "Anabolic Steroids and Human Growth Hormone," states, "With very limited exceptions, the state law requires a written prescription for a controlled substance and that an examination by a practitioner be conducted prior to the issuance of a controlled substance." Paragraph 4 of the memo goes on to warn of "unscrupulous practitioners" who write prescriptions despite the absence of legitimate medical reasons. In paragraph 8, members of service are advised that "obtaining any controlled substance without a bona fide doctor/patient relationship is illegal and subjects the member to disciplinary action."

Here, Respondent's telephone interaction with a doctor at a Florida clinic did not constitute a bona fide doctor/patient relationship as envisioned by PBM-44. Respondent chose not to consult with a Department doctor, and instead sought out a doctor in another state. At the suggestion of a gym acquaintance, he contacted the Wellness Fitness Nutrition Clinic in Florida. Respondent forwarded his blood work to the clinic, and had a

telephone conversation with a doctor from the location. Based on this cursory interaction with Respondent, the Florida doctor issued prescriptions for two controlled substances through a pharmacy located in a *third* state, namely Michigan. There was no credible evidence that Respondent had a medical condition for which [REDACTED] would properly have been prescribed. Similarly, Dr. Green testified that from his review of the records, there was nothing that created a need for prescription [REDACTED], though Respondent points out that the Department subsequently approved a [REDACTED] prescription for Respondent. No medical records were produced from the Florida clinic. As such, even taking into account the subsequent Department-approved prescription, the prescriptions from the Florida clinic were obtained under highly questionable circumstances.

Additionally, when questioned at the time he was drug tested, Respondent did not mention in his questionnaire that he was taking any medications other than Aleve. Respondent's explanation for this omission is that the question asked if he had taken any medications in the past 72 hours, which he claimed he had not. However, Respondent also testified that he took the prescribed [REDACTED] which raises some doubt regarding the legitimacy of his excuse, and suggests he was instead trying to hide his use of anabolic steroids from the Department. Even more telling is Respondent's answer to the question asking him to list any prescription medication taken during the past 3 months: Respondent answered "nothing to report," thereby reinforcing the conclusion that he was trying to conceal his use of steroids.

Respondent's claim that two of the positive results could have come from the supplements he was taking is similarly unpersuasive. First, one of the supplements that

Respondent claimed to have taken contained the description "Anabolic" on the front label. Paragraph 14 of PBM-44 specifically warns that products labeled with the code word "anabolic" have been found to contain anabolic steroids, and that "members should avoid these products in addition to those specifically listed." As such, Respondent's use of that supplement runs afoul of the warnings in the Department guidelines.

More importantly, the argument that Respondent's use of supplements led to the positive test results is purely speculative. No evidence was presented that the supplements Respondent allegedly used actually contained ingredients that led to these results. Dr. Ciuffo testified that from his review of the labelling on the bottles, the supplements would not have caused Respondent to test positive for steroids. He acknowledged, though, that the supplements in question were not tested by the Department, and that there was a risk that the products were mislabeled, particularly since the supplements are not regulated by the FDA. But even so, there was no affirmative evidence that these particular supplements actually contained ingredients that caused any of the four positive test results.

The only reasonable conclusion from the credible evidence is that Respondent wrongfully ingested or injected four anabolic steroids, or precursors, leading to the positive test results. In order to ingest these controlled substances, Respondent first had to possess them. None of the defenses raised by Respondent constitutes a legitimate explanation for the positive test results. Accordingly, I find Respondent guilty of both specifications.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 31, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no formal disciplinary history.

The Department has requested that Respondent be dismissed from the Department. Based upon the record before me, I concur in that recommendation.

In a questionnaire, Respondent initially denied taking any prescription medications. Later, he tried to justify the positive test results, in part, based on [REDACTED] under highly questionable circumstances, from a Florida clinic through a Michigan pharmacy. His additional claim that the supplements could have caused some of the positive test results was speculative at best, and similarly unpersuasive. Under the facts of this case, the only reasonable conclusion is that Respondent deliberately engaged in the use of anabolic steroids.

Dr. Green testified about the potential side-effects of taking anabolic steroids. They can affect the brain and cause psychological changes in a person, such as increased aggressiveness and depression. They also can increase the risk of a heart attack, and cause problems in the liver and kidneys.

Recent decisions involving the use of steroids have been deemed an egregious violation of Department policy, warranting separation from the Department. See *Disciplinary Case No.* [REDACTED] *and Disciplinary Case No.* [REDACTED], where in each case the Police Commissioner offered vested-interest retirement for steroid offenses.

Taking into account the facts and circumstances in this matter, along with the legal precedent, I recommend that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER OTIS PERKINS
TAX REGISTRY NO. 941103
DISCIPLINARY CASE NO. 2016-16242

Respondent was appointed to the Department on January 31, 2006. On his last three annual performance evaluations, he received a 3.5 overall rating of "Highly Competent/Competent" in 2016, and 3.0 "Competent" ratings in 2014 and 2015. [REDACTED]

[REDACTED]

Respondent has no formal disciplinary history. He was placed on Level 2 Discipline Monitoring on October 13, 2016 in connection with the instant Charges and Specifications; that monitoring remains ongoing. Respondent was suspended in connection with this matter on August 16, 2016. He subsequently was modified on September 15, 2016, which remains in effect.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials